4/10/2003

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT OF THE
TRIAL DEPARTMENT
CIVIL ACTION NO. 0201159A

MARCIA RHODES, HAROLD RHODES, INDIVIDUALLY, HAROLD RHODES, ON BEHALF OF HIS MINOR CHILD AND NEXT FRIEND, REBECCA RHODES

Plaintiffs

-v-

CARLO ZALEWSKI, DRIVER LOGISTICS, PENSKE TRUCK LEASING CORP., AND BUILDING MATERIALS CORP. OF AMERICA, D/B/A GAF MATERIALS CORP.

Defendants.

ANSWER TO BUILDING MATERIALS CORPORATION OF AMERICA'S FIRST SET OF INTERROGATORIES TO PLAINTIFF MARCIA RHODES

Pursuant to Rule 33 of the Massachusetts Rules of Civil Procedure, Plaintiff Marcia Rhodes, makes the following Answers to Building Materials Corporation of America's First Set of Interrogatories to Plaintiff Marcia Rhodes within forty-five (45) days after service.

GENERAL OBJECTIONS

1. Marcia Rhodes objects to the disclosure of any information protected by any recognized privilege against disclosure, including, but not limited to, the attorney-client privilege and the attorney work-product doctrine.

2. Marcia Rhodes objects to any interrogatory that purports to require anything beyond that which is required by Rule 33 of the Massachusetts Rules of Civil Procedure.

3. Marcia Rhodes objects to any interrogatory that requires one or more conclusions of law.

4. Marcia Rhodes objects to any interrogatory that calls for confidential information.

DEFINITIONS

As used herein, the term "irrelevant" means that a request calls for documents which are not relevant to the subject matter of this action and which are not reasonably calculated to lead to the discovery of admissible evidence.

As used herein, the term "burdensome" means that it would be unduly burdensome, oppressive, annoying, time consuming and expensive to compile and furnish the documents called for in view of the degree of their relevance and materiality, if any.

As used herein, the term "overly broad" means that a request is unreasonably general, vague and nonspecific.

As used herein, the term "compound" means that a request contains multiple, unrelated categories of documents that are improperly combined together.

As used herein, the term "confidential" means the documents requested are retained in confidence at the express or implied request of a third party or that it is the custom of the trade to retain such records in confidence.

As used herein, the term "privileged" means that the documents requested are subject to either the attorney-client privilege, the attorney work product doctrine or any other recognized privilege against disclosure.

ANSWERS

Subject to the foregoing definitions and objections, and without waiving the right of Marcia Rhodes to object to the admissibility, publication or other use of any response or information derived therefrom, Marcia Rhodes responds as follows:

INTERROGATORY NO. 1

Please identify each person involved in answering these interrogatories on your behalf (i) stating each interrogatory that each such person assisted in answering, and (ii) identifying all persons or entities you consulted in responding to these interrogatories, including information that each person or entity provided.

ANSWER

Marcia Rhodes, assisted by counsel.

INTERROGATORY NO. 2

Please identify each person who has knowledge of the facts and circumstances relevant to the subject matter of this case; and, for each such person identified, please state:

a) a summary of the knowledge possessed by the person;

b) whether you have taken any statement from such person; and

c) the date and subject matter of each statement identified in subparagraph (b) of this interrogatory.

ANSWER

Marcia Rhodes objects to this Interrogatory as it is impossible for her to identify every person with knowledge of relevant facts, especially as to those agents, employees and representatives of the corporate defendants. Without waiving such objection, Marcia Rhodes responds as follows:

(a) Marcia Rhodes is aware of the facts of the accident, her injuries and the effect on her and her family.

Harold Rhodes is aware of the accident scene after he arrived, Marcia Rhodes' injuries, her medical treatment and the damages suffered by the entire Rhodes family.

Rebecca Rhodes is aware of the extent of her mother's injuries, her medical treatment, and the effect that Marcia's injuries have had on her relationship with her mother and the entire family.

Sergeant Boltenhouse, Medway Police, has knowledge of the accident scene, police and emergency response at the scene and the path of the tractor trailer after it struck my car.

Carlo Zalewski has knowledge of his conduct in causing the accident, of the accident scene and the response of both the police and medical personnel.

Massachusetts State Police representatives. See documents produced in response to BMCA's document request to Marcia Rhodes, Request No. 5.

Medway Police Dept. representatives. See documents produced in response to BMCA's document request to Marcia Rhodes, Request No. 5.

Various medical personnel. See documents produced in response to BMCA's document request to Marcia Rhodes, Request No. 5 and Request No. 8.

Jerry McMillan was grinding stumps at the scene and is aware of the accident scene. He heard the crash and saw the tractor trailer push my car into the woods.

Santos Ramirez was a witness driving the car behind the tractor trailer and observed the truck and police officer in the road, and the accident scene.

Ramon DeBriae, a passenger in car driven by Ramirez, saw the officer directing traffic and the truck on the side of the road. He also saw the police officer running to get away from the tractor trailer as it pushed my automobile into the woods.

(b) Marcia Rhodes objects to this Interrogatory, as it seeks the production of attorney work product.

(c) Marcia Rhodes objects to this Interrogatory, as it seeks the production of attorney work product.

INTERROGATORY NO. 3

Please identify each person you expect to call as a witness at trial, describe the substance of his or her testimony, and identify any documents concerning that testimony.

ANSWER

Marcia Rhodes objects to this Interrogatory as it seeks the production of attorney work product. Without waiving this objection, Marcia Rhodes states that there have been no decisions made as to which witnesses will testify at trial.

INTERROGATORY NO. 4

Please identify each person you expect to call as an expert witness at trial, and state for each:

(a) the subject matter on which the expert is expected to testify;

(b) the substance of the facts and opinions to which the expert is expected to testify;

(c) his or her education and qualifications; and

(d) a summary of the grounds for each opinion.

ANSWER

Plaintiffs have not yet made the determination of which experts will testify at trial, and they reserve their right to supplement this response.

INTERROGATORY NO. 5

Please state the basis for any and all damages you allege you suffered as a result of BMCA's conduct and, further, please state the following:

(a) the total amount of the claimed damages (in dollars) which you contend BMCA has caused you to suffer;

(b) the basis for the claim that BMCA has caused you to suffer the damages stated in your answer to subparagraph (a) of this interrogatory;

(c) describe in detail each item of claimed damages and the manner in which such damages were calculated;

(d) identify each and every person with knowledge of the facts contained in your answers to subparagraphs (a) through (c) of this interrogatory;

(e) identify all documents that concern your answers to subparagraphs (a) through (c) of this interrogatory; and

(f) the total amount (in dollars) you have received from any person for your claimed damages.

ANSWER

(a) My medical costs to date exceed $1 million and my medical, monitoring and treatment costs and related supplies will cost millions of dollars over the rest of my life. In addition, my husband has spent $190,000 to date for equipment and supplies as well as purchasing a handicapped van and making preliminary modifications to our house that were necessary for me to come home after months of inpatient treatment. We will begin construction soon on a more complete renovation/remodeling so that I can live in more than two rooms and so our family can all eat meals together again. The new addition is estimated to likely cost in excess of $250,000. I cannot estimate the dollar value of my pain and suffering and the fact that I have been rendered a paraplegic, and the devastating effects my injuries and continued complications have had on me, my relationship with my husband and daughter, and our lifestyle.

(b) As alleged in the Complaint, BMCA, through GAF, exercised sufficient control over Zalewski that he was acting as BMCA's agent while driving the tractor trailer and causing the accident that resulted in all of the damages referenced in subparagraph (a) of this response.

(c) Please refer to my response to subparagraph (a). Damages were calculated by adding all of the costs incurred resulting from my injuries and various medical conditions.

(d) Marcia Rhodes and Harold Rhodes.

(e) Please refer to subparagraph (a) of this response and to documents produced in response to BMCA's First Request for Production of Documents to Marcia Rhodes, Request No. 4.

(f) $8,000 from MetLife.

INTERROGATORY NO. 6

Please state all fact(s) you became aware of concerning the accident on January 9, 2002, for each fact, please state:

(a) when you became aware of the fact;

(b) the person(s) who became aware of the fact;

(c) identify each and every person with knowledge of the facts contained in subparagraphs (a) and (b) of this interrogatory; and

(d) identify all documents that concern your answers to subparagraphs (a) and (b) of this interrogatory.

ANSWER

(a)-(c) On January 9, 2002, as I was traveling on Route 109 in Medway, I saw a police officer and truck on the side of the road. The officer indicated that I should stop, which I did, near Trotter Drive on Route 109. After I had been stopped, I glanced in the rearview mirror and saw the tractor trailer bearing down on me. I turned my wheels to the right, but the truck smashed into me before I could get out of the way. I was conscious at the time of impact and after, and remember giving the police or paramedics my husband's phone number and asking them to call him to come to the scene. I could not feel my legs, but I was in great pain. After my husband arrived, I asked the paramedics or EMTs to give me painkillers and told them that my husband was in charge if I lost consciousness.

(d) There are no documents.

INTERROGATORY NO. 7

Please state the basis for your contention, contained in Paragraphs 30 and 31 of the Complaint, that:

(a) BMCA exercised control over the contractors; and

(b) BMCA failed to use reasonable care in its exercise of control over the manner in which the tractor-trailer was operated.

ANSWER

Please refer to my response to Interrogatory No. 5(b). By way of further answer, Zalewski drove exclusively for BMCA/GAF for years and was dispatched by BMCA/GAF to drive the tractor trailer to Millis on January 9, 2002. While he was driving the load to Millis on behalf of BMCA/GAF, he drove into my stopped car and caused my devastating injuries. BMCA is responsible for the conduct of its driver, its agent, Carlo Zalewski, who failed to use reasonable care while operating the tractor trailer on behalf of BMCA/GAF.

INTERROGATORY NO. 8

Please state all medications you were prescribed and/or taking prior to, at the time of, and after the date of the accident on January 9, 2002, the physician who prescribed them, and the reason for each prescription.

ANSWER

Dr. Ben Aspel

Medications as of 1/9/02:

- Cylert - ADHD
- Prozac Pulvule - Depression
- Lithium Carbonate - Depression
- Wellbutrin Sr - Depression
- Ritalin - ADHD
- Ibuprofen – Pain
- Valium – Muscle Relaxant

Medications taken prior to 1/9/02:

- Chlorhexidine Gluconate - Mouthwash
- Erythromycin Topical Solution – Prevents bacteria
- Flexeril – Muscle Relaxant

See also Summary of Prescription Expenses produced.

INTERROGATORY NO. 9

Please state all medical centers, hospitals, and/or health care facilities that provided you treatment as a result of the accident on January 9, 2002.

ANSWER

See the documents produced in response to BMCA's First Request for Production of Documents directed to Marcia Rhodes, Response No. 8.

INTERROGATORY NO. 10

Please state the name, title, address and phone number of all health care workers, included but not limited to physicians, nurses, and home care providers, who treated you after the accident on January 9, 2002.

ANSWER

Marcia Rhodes objects to this Request as it is unduly broad and burdensome in light of the fact that she was an in-patient at hospitals and rehabilitation facilities for months and is unable to identify each and every doctor or nurse who "treated" her after January 9, 2002. Notwithstanding this objection, and without waiving it, the following healthcare professionals have had the most substantive involvement in her treatment:

Dr. Elizabeth Roaf - Physiatrist
Dr. Donna Krauth - Internist
Dr. James Bayley - Orthopedic Surgeon
Dr. Ben Blumenkopf - Neurosurgeon
Dr. Kelly Clark - Psychiatrist
Dr. Jill McNulty - LICSW
Dr. Eric Woodard - Medical Director of Spinal Cord Unit at the Brigham Hospital
Dr. Barry Armet - Dental
Endontic Care (Milford) - Periodontist
Visiting Nurse Association of Milford including Nursing, Physical Therapy, Occupational Therapy and Social Work
Dr. Lewis Kuchner - Dermatologist
Dr. David DeGrande - Internist (at Fairlawn Rehabilitation Hospital)
Dr. Leonard Digiovannido - OB/GYN
Dr. Marc Nierman - Urologist
Dr. Eileen Dvorkin – Nutritionist
Dr. Nicholas Mastroianno – Orthopedic surgeon
Dr. Ben Aspel - Psychiatrist

In addition, please refer to the documents that were produced in response to Request No. 8 of BMCA's Request for Production to Marcia Rhodes.

INTERROGATORY NO. 11

Please provide the name, address, telephone number, and policy number of your automobile insurance policy and state any traffic tickets, violations and/or automobile accidents which you were involved in from 1997 to the present.

ANSWER

The auto policy for my car was with MetLife. Marcia Rhodes objects to the request for traffic violations and accidents since 1997 as they are not relevant to any of the issues in this case and will not lead to the discovery of relevant information. See documents produced to Request Nos. 3 and 6.

INTERROGATORY NO. 12

Please provide the name, address, telephone number, policy number and coverage dates of your medical insurance/health care provider.

ANSWER

United HealthCare of New England, P.O. Box 37440, Louisville, Kentucky 40233-7440; File Number: XH-312624414011, January 1, 2002 through December 31, 2002 and continues forward annually.

INTERROGATORY NO. 13

Please describe in detail the nature and extent of any injuries you suffered as a result of the accident on January 9, 2002, and your recovery progress since the date of the accident, including but not limited to any physical or occupational therapy you have undertaken.

ANSWER

My spinal cord was fractured at T-12, leaving me paralyzed from my waist down. I also suffered broken ribs, deep vein thrombosis (blood clot) in my left leg, a cerebral hematoma, pancreatitus, pneumonia, a neumo-thorax, anemia, elevated blood function and endocrinology tests, as well as bruises and contusions to my body. I was hospitalized for one month at UMASS Medical Center where I underwent spinal fusion surgery, had two 6 inch titanium rods inserted along my spine, and required the use of a ventilated breathing machine. Many times my body temperature was very high. Additionally, I had one blood clot removed and then I had a blood clot filter inserted into my body. I was released to Fairlawn Rehabilitation Hospital where I stayed for another two months. My recovery was impeded by the fact that I had contracted Methicillin Resistant Staphylococcus Aureus (MRSA) [a staph infection] and could not undergo any physical therapy while the staph infection was being treated. When I did do physical and occupational therapy, it was extremely painful and depressing. I developed a second blood clot in my leg, which is currently being treated with Coumadin, for which I require weekly blood examinations – which are quite painful – to check my INR/PT levels. This blood clot has caused my leg to swell extensively, making physical therapy practically impossible. By the time I was released from Fairlawn, I was still essentially entirely dependent on other people to accomplish any transfer from my wheel chair to my bed or from my wheel chair to the toilet, etc. Since I was paralyzed, I could not feel any pain or discomfort, and was unable to detect that fluid had begun to build up around my gall bladder. In May, 2002, my body temperature became quite high, I was nauseous, and I began to vomit. Therefore, in May, 2002 I had to be hospitalized again at the Milford-Whitinsville Regional Hospital to undergo emergency surgery to remove a

gangrenous gall bladder. After one week of recovery at Milford Hospital, I had to go for another two weeks of rehabilitation at Whittier Rehabilitation Hospital and came home again in June. Shortly thereafter, because I was undergoing such intensive physical therapy and practicing in trying to maneuver my wheel chair, I developed tendonitis and bursitis and had to stop all physical therapy until my arms and shoulders could heal. In the Fall of last year, I began to suffer stomach pain, which was ultimately attributed to the rods inserted in my spine (described as "Juncture Pain"), and I was advised that this would be pain that I would have to live with. I am currently taking Percocet each day to deal with this pain. At this point in time, I still required the assistance of another person to achieve any transfers. I continued physical therapy in October 2002, and by November 2002, I could maneuver my wheel chair around my house, but still had difficulty in making transfers. Unfortunately, I developed Level 1, Level 2 and Level 3 pressure sores in early December, 2002, and had to remain in bed, on my sides for almost three months to relieve pressure on the sores. Since I was unable to continue with physical and occupational therapy, once again I developed severe bursitis and tendonitis, which is requiring a multiple series of ultra-sound treatments and which I am still undergoing. Then, in February, 2003, I fell off the commode during a transfer back to my wheelchair and landed on the hard tile floor. Because I have no feeling in my legs, it was impossible to determine if I had broken or fractured any bones. Shortly thereafter, as I was almost recovered from the pressure sores in early March, 2003, I developed an infection in my right leg and was treated with antibiotics. The infection was very resistant to treatment and I had to go to Milford Hospital to be treated twice, on two separate occasions, with intravenous antibiotics every twenty-four hours for three days in a row. In the course of treatment for my leg infection, it was ultimately determined that I had two broken bones in my right leg -- the tibia and fibula -- and one fracture near my left knee. I have been fitted with a full leg cast on my right leg. The doctors believe that these bones were fractured during the fall in February. Again, because I have no feeling below my waist, I was unaware that these bones were broken. In addition to the broken bones, in March, 2003, I was diagnosed as suffering from osteoporosis. At this time, I am currently undergoing ultrasound treatments again to relieve my bursitis and tendonitis. I still require the assistance of at least one person (and usually two people) to make any transfers and still suffer from bursitis and tendonitis in my shoulders and upper back. In addition, I perform a multiple-hour bowel program every morning (which lasts up to as long as four hours), as I have no control over elimination functions. I also have to do urine removal via a full-time Foley catheter, from which I have suffered several urinary tract, bladder, and fungus infections. Additionally, on several occasions, there has been blood, and other foreign material in my urine. On April 5, 2003, I again fell from the toilet during transfer and had to be taken to the emergency room for x-rays. I did not suffer additional fractures, but additional pressure sores were discovered and I must resume bed rest (with my leg in a cast) for another month to allow the sores to heal, further aggravating the bursitis and tendonitis. I now live with back spasms, general all-over body pain, general fatigue, very restricted living limitations, a great loss of personal independence, seemingly unrelenting stress, and daily personal embarrassment. I must see many doctors each week and worry about unplanned visits to the Emergency Room. Finally, since I suffer from ADHD and bi-polar disorder, my mental condition has significantly worsened as a cause of this accident; as a result, I have much difficulty sleeping. Last, I live with the deep depression of the knowledge of the limitations placed on me as a result of the accident which will continue throughout the course of my life.

SIGNED under the pains and penalties of perjury this 8 day of April, 2003.

Marcia Rhodes

AS TO OBJECTIONS:

Carlotta M Patten

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CERTIFICATE OF SERVICE

I, Carlotta M. Patten, counsel for plaintiffs, hereby certify that I have this day served a copy of the foregoing Answer To Building Materials Corporation Of America's First Set Of Interrogatories To Plaintiff Marcia Rhodes in the manner indicated below:

By First Class Mail
Michael Smith, Esq.
Morrison, Mahoney & Miller
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By First Class Mail
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Carlotta M. Patten

DATED: April 10, 2003

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